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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 377

JOHN J. ROGERS, *et al.*,
Petitioners,

vs.

ALASKA STEAMSHIP COMPANY, *et al.*,
Respondents.

JOHN J. ROGERS,
Petitioner,

vs.

AMERICAN PRESIDENT LINES, LTD.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief for Respondents in Opposition

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OPINIONS BELOW

The opinions of the court of appeals in the *Alaska Steamship* case, No. 16862 below, are reported at 290 F.2d 116 and 290 F.2d 124. The opinions are printed in the appendix to the petition, pp. 4-24. The opinions affirmed a decree of the district court entered on February 16, 1960,

unreported, printed in the appendix to the petition, pp. 32-35.

The opinion of the court of appeals in the *American President Lines* case, No. 17140 below, is reported at 291 F.2d 740. It is printed in the appendix to the petition, pp. 25-31. The court of appeals there affirmed the decree of the district court entered on September 2, 1960, based on an order dated May 31, 1960, unreported, printed in the appendix to the petition, pp. 35a-35c.

These decrees and opinions involve some fourteen other orders of the district court. An abbreviated history of this litigation, printed at the beginning of the appendix to this brief, sets forth the chronology of these orders. The principal orders are printed in the appendix as indicated in such history. Consideration may also be necessary of a consent decree of the court of appeals, a certification of the National Labor Relations Board, and an earlier opinion of the court of appeals, all of which are also referred to in the abbreviated history of proceedings with references as to where they are printed.

JURISDICTION

Respondents do not attack the jurisdiction of this Court.

QUESTIONS PRESENTED

Petitioners[1] assert that four questions are presented to this Court. The first two, relating to class actions and joinder, are not here because the court of appeals properly held them to be moot.

1. The term "petitioners" when unqualified is used as embracing three groups identified as (1) the "650 petitioners", those petitioners who never were parties below, (2) Rogers, the "libelant-petitioner" who filed a timely amended pleading, and (3) the other three "libelant-petitioners" who were named as parties to the first libel but who failed to file timely amended pleadings.

The third question, involving an alleged misconstruction of orders below, is a belated attempt to raise a due process issue that is not presented by this record.

The last question, an abstract one regarding use of the common counts in a pleading, is likewise not presented by this record. The question on this subject is the following:

> Whether the mere inclusion in a seamen's libel of implied contract allegations in the form of the common counts precludes dismissal of an action on wages covered by an express contract when libelant refuses to allege any facts to avoid the binding and valid character of that contract.

STATUTES INVOLVED

The questions before this Court do not directly raise the interpretation of any statute but 28 U.S.C. § 1916 (relating to jurisdiction), 46 U.S.C. §§ 564, 565, 578, 597, 604, 644, 676 and 713 (the statutory provisions as to shipping articles), Supreme Court Admiralty Rules 23, 27, 38 and 44, and local admiralty rule 7 are of significance and are printed in the appendix to this brief.

STATEMENT

Respondents on whose behalf this brief is filed have diverse and at times conflicting interests and positions with respect to issues involved in this action. Nevertheless they are in agreement that the decisions below attacked in the petition are correct in all respects and do not call for further review in this Court. Accordingly they have consolidated their arguments in this one brief.

Petitioners are stewards department seamen employed on West Coast American flag vessels. Prior to June 19, 1952 they were represented by an exclusive agent for col

lective bargaining recognized by their employers, but a dispute developed involving several unions claiming such status. On that date the court of appeals entered a decree - consented to by the then contesting unions, the employers and the National Labor Relations Board - enforcing an order of the Board directing the employers to recognize no union as exclusive representative of stewards department employes until certification by the Board (R. 82-130; Pet. App. 36-64).[2] This decree also imposed requirements as to the wages to be paid. During the period the decree was in effect petitioners worked under shipping articles that included the wage terms required by the decree.

On June 21, 1955 the Labor Board certified the Seafarers' International Union of North America, Pacific District, including the Marine Cooks & Stewards, AFL, as exclusive bargaining representative of all unlicensed seamen on the West Coast vessels involved in the consent decree (112 N.L.R.B. 1283; App. 13). Promptly following certification the union and the employers entered into negotiations. Giving consideration to practical factors, such as the possibility of strike, the employers agreed to wage increases, retroactive wages and immediate payment of $1,000,000 into a welfare fund covering petitioners (R. III. 18). Petitioners, being dissatisfied with this certification and this bargain,[3] instituted a suit on February 8, 1956, which has now given rise to this petition.

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2. In referring to the record we shall follow the form used in the petition. References designated by "R." are to the *Alaska Steamship* transcript, No. 16862 in the court of appeals. References designated by "R. III." are to the *American President Lines* transcript, No. 17110 in the court of appeals.

In referring to appendices, references designated by "App." are to the appendix to this brief. References designated by "Pet. App." are to the appendices to the petition.

3. Petitioners claim that this certification was unlawful and that the bargain is not binding on them (R. III. 23).

Four of these dissidents filed the suit, choosing to proceed against 33 respondents in one libel stating four counts as described below. The libel claimed that additional wages were owing the employes who worked under the consent decree in order to give them the reasonable value of their services. In the first two counts, the four attempted to sue on behalf of themselves and for several hundred of the petitioners who had allegedly authorized them to sue on a "representative" basis; the last two counts purported to state class actions demanding that the 33 respondents be ordered to pay additional sums into two pension and welfare trusts (R. 1-17). It is undisputed that neither the certified union, which remains to this day the exclusive bargaining representative, nor the great body of the 4,000 cooks and stewards represented by it, nor the trustees of the welfare and pension plans, have participated in this suit in any way.

Respondents filed the ordinary exceptions to be expected in the circumstances. They insisted that each respondent as a separate employer was entitled to pleadings that related to only its employment and that were otherwise in accordance with the accepted and usual course of judicial proceedings, pointing out that the libel failed to disclose which seaman was claiming against which respondent, the voyage upon which the seaman had served, or the amount claimed, and that the class suit attempted to join a large class of libelants against many independent respondents and was not within the court's jurisdiction under 28 U.S.C. § 1916 (R. 20, 22-51, 238-245 and supporting memoranda).

These exceptions were upheld in substantial part by order entered November 16, 1956, determining that "a class suit as is attempted in the third and fourth counts" should be dismissed, that the applicable local admiralty rule precluded libelant-petitioners' heterogeneous joinder of libel-

ants, respondents and causes, but that respondents' motions to dismiss the action be denied (R. 57-61; App. 14-18). A motion for reconsideration was filed, heard, and denied (R. 62, 76-78; Pet. App. 65-67). The order of February 12, 1957, which formalized the court's decision at this stage, set forth explicit terms for further participation in this suit.[4] The principal terms, as the opinion of the court of appeals clearly sets forth, were that "only the original four libelants could file amended pleadings" (R. 605; Pet. App. 15) and that the causes of action had to be "completely severed as to the individual respondents" so that only one respondent would be named in any amended libel (R. 605; Pet. App. 16). The order also permitted any two or more of the libelants to join their claims, and any libelant to join his claim with the claims of others whom he was authorized to represent, against any one respondent with respect to one or more voyages on which they served together (R. 77-78; Pet. App. 66). Participation in this suit could be on the terms so outlined, "but not otherwise" (R. 78; Pet. App. 66).[5]

During the three years after the 1956 order, petitioners made "several attempts to persuade" the courts below not to apply the terms of the original orders to them - this they directly admit (Pet. 16-17) - and carried on other dilatory action. They moved to consolidate their claims prior to the filing of any further pleadings (R. 63-64); this was denied (R. 78). They appealed to the court of appeals (R. 79); their appeal was dismissed as being premature (R. 148-

4. It is set forth in full in the appendix hereto, 18-20.

5. These terms were "imposed" or "directed" as provided in Supreme Court Admiralty Rules 23 and 27, the terms being based on local admiralty rule 7, generously construed over respondents' objections to permit joinder as specified to facilitate the presentation of claims that libelant-petitioners sought to have adjudicated.

1-8; Pet. App. 68-78). They submitted interrogatories (R. 134-135); the court held them to be "manifestly premature and improper" (R. 160; App. 22). They filed one amended libel (R. 166-176) (stating the individual claims of Rogers against American President Lines, involved in No. 17110 below) preceded, however, by a motion for leave of the 650 petitioners and the other three libelant-petitioners to become parties or to intervene as parties (R. 163-164; App. 23-24). Their motion to become parties was denied (R. 179-180; App. 24-25). Petitioners asked that this denial be without prejudice to its later renewal; this was not granted (R. 582). They also requested an order requiring the Coast Guard to provide their proctors with a mass of employment data without cost to them (R. 579-580) and then waited 102 days after the request was approved before presenting a written order thereon (R. 195-196; App. 27; see App. iii). During these three years, petitioners sought and obtained ten extensions of time to file pleadings, consistently conditioned on compliance with the terms imposed by the original orders.

Just 17 days less than three years after the original order was entered, a further request for time was presented and heard on October 30, 1959 (R. 584-594). In view of the time that had already elapsed and petitioners' patent unwillingness to comply with orders theretofore entered in this suit, respondents opposed this request and asked that further terms be imposed on petitioners if any additional time were granted. The court agreed that further terms were appropriate. With the consent of petitioners an order was entered giving 75 additional days in which to file amended pleadings "in strict conformity to and compliance with" the original orders, specifying that no other pleading or action would be permitted and that no further time would be granted, and warning that respondents against

whom such pleadings were not filed would be dismissed from this suit.[6]

The second amended libel in personam (R. 296-528) was the only pleading filed during this 75 day period. In one libel it joined most or all of the 650 petitioners (but none of the libelant-petitioners),[7] it joined 61 respondents (23 of the original 33 respondents plus 38 new ones), and it joined as yet uncounted causes of action. Respondents filed a motion to dismiss (R. 213-214). On February 2, 1960 the district court held that this pleading was not filed in accordance with the governing orders and that the 650 petitioners, having inexcusably "delayed more than three years to file . . . in their own behalf", came too late (R. 223-224; App. 31). It accordingly entered a decree that severed the individual claims of Rogers against American President Lines and dismissed all other respondents, all other libelant-petitioners, all 650 petitioners, and all other causes (R. 226-229; App. 32-34).

The decree was affirmed (R. 597-609; Pet. App. 4-21).[8] The court of appeals held that the decree was a final adjudication on the merits as to the four libelant-petitioners (other than as to the individual claims of Rogers against American President Lines) but specified, as to the 650

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6. The order consented to was formalized and signed on December 30, 1959 and is set forth in full in the appendix, 28-30.

Time had previously been extended on: January 23, 1958, March 5, 1958, April 23, 1958, June 27, 1958, August 26, 1958, October 31, 1958, February 5, 1959, February 25, 1959, May 6, 1959, and August 31, 1959.

7. At any time after February 12, 1957, any one of the libelant-petitioners could have filed a pleading like the one Rogers filed. There has never been a claim that many pleadings meeting the terms imposed in the original orders could not have been filed in this one suit.

8. The court of appeals overruled petitioners' contention that they satisfied the applicable terms and orders. They do not ask this Court to review this holding. See Pet. 16-17, 24 and third question, Pet. 3.

petitioners who had never been parties that the decree "could not have adjudicated the merits of their claims by foreclosing future suits" (R. 607; Pet. App. 19). It also held that the class suit and joinder issues involved in the 1956 and 1957 orders were moot, pointing out that because the parties "elected to amend", they could not complain "of the order which required the amendment" (R. 608; Pet. App. 20-21). The opinion denying rehearing reiterated that petitioners had elected to amend and held that petitioners could not establish "the underlying premise upon which the class counts are based" (R. 613; Pet. App. 24).[9]

Meanwhile a decision on the merits was reached on the individual claims of Rogers. His pleading set forth in general the facts as to wages and the consent decree, specified the voyages on which he sailed, asserted that his employer had not paid him the reasonable value of his services and had been unjustly enriched as a result thereof, and demanded additional wages be paid him, including the sums previously sought for the benefit of the welfare and pension funds (R. III. 1-10).[10] Exceptions (R. III. 11-14) and exceptive allegations (R. III. 15-21) and replies thereto (R. III. 22-26) were filed and facts were admitted. In his reply to exceptive allegations, Rogers alleged he was led to believe he would be paid the full and reasonable value of his services after certification of a collective bargaining agent

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9. The court explained (in this supplementary opinion after argument in the Rogers individual case) that before anyone could show that any sums were due to the welfare and pension plans it was necessary to establish, as the first premise of such a case, that additional wages were due to the seamen so as to raise the base on which the welfare and pension contributions were computed (R. 612-613; Pet. App. 22-24).

10. See paragraphs IX and X of the individual libel filed by Rogers (R. III. 3-4) and *cf.* paragraphs VIII and IX of the second amended libel (R. 298).

and without the necessity of suit (R. III. 24).[11] On the entire record it appeared without dispute that Rogers had on each voyage been employed pursuant to the terms of written shipping articles as required by 46 U.S.C. §§ 564 and 565 (App. 1, 2) and that he had been paid in full under his express written agreements.

The district court ruled that an action on an implied contract does not lie where there is a valid express contract covering the subject matter and that the shipping articles were valid express wage contracts in the absence of any allegations avoiding them (R. III. 27-30; Pet. App. 35a-35c). Rogers was given leave to file a further amended pleading (R. III. 29-30; Pet. App. 35c), but he elected to stand on his pleading. A decree on the merits was entered (R. III. 45-46; App. 38). An appeal was taken, and the court of appeals affirmed (Pet. App. 25-31).

REASONS FOR DENYING THE WRIT

Petitioners present no substantial questions that should be reviewed by this Court. The petition purports to present questions as to whether class actions lie in admiralty, whether "representative suits" for seamen's wages may be joined under specified circumstances, whether a libel for wages may be dismissed with prejudice "for mere misconstruction of an ambiguous order" without violating the due process clause and whether wage claims by seamen can be stated in the form of the common counts. As fully appears from the opinions of the court of appeals (R. 597-609, 612-613, R. III. 55-59; Pet. App. 4-21, 22-24, 25-31) none of these

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11. Petitioners now assert, for the first time, that this expectation was based on employer assurances. There were neither allegations to this effect in the record nor even any such claim below during the years this suit has been pending.

questions is presented by the present record. The court of appeals held the first two questions as listed in the petition moot and so did not reach them (R. 608; Pet. App. 20-21). The third question, which is a belated attempt to create a due process issue based on a contention that petitioners were dismissed with prejudice "for mere misconstruction of an ambiguous order", is not presented by the record. Similarly, petitioners' abstract common counts question is not open here. The common count question presented by the record, which we have stated, is clearly not substantial; however, since it goes to the foundation of the petitioners' claims it warrants first consideration.

No substantial question is presented to this Court with respect to the use of the common counts in the libel against American President Lines.

Petitioners have incorrectly stated the question presented to this Court with respect to their use of the common counts. There was no issue below, nor is there one here, as to whether allegations in the common counts can be used to state wage claims in an admiralty court or any other court. The relevant question is whether the libel was immune to attack simply because the allegations of the basic facts were supplemented by paragraphs of common counts setting forth the theory of each cause of action. In other words the question is whether a libelant may recover the reasonable value of his services or common counts when the pleadings establish he has worked under a valid express wage contract.

The district court held that the Rogers libel did not state a cause of libel because the parties' express contract "must be set aside . . . under some theory" before the court can imply a contract for them (R. III. 29; Pet. App. 35c). It granted Rogers leave to file an amended pleading, pointing out:

> "The very least required of libelant is that he set forth the facts he relies on to avoid the ordinary meaning of the employment contract and the release. If he relies upon fraud or perhaps upon duress he must allege what facts constitute such; if he has another theory to avoid these agreements he should state it." (R. III. 29; Pet. App. 35c).

He elected to stand on his pleading. Thereupon the court entered a final, appealable decree (R. III. 35-36; App. 38). This decision on the merits was affirmed (R. III. 55-59; Pet. App. 25-31).

The lower courts have understandably refused to imply a contract where a valid and binding express contract covers the subject matter. This principle is well established. *Klebe v. United States*, 263 U.S. 188 (1923). Application of this principle in admiralty is consistent with, if not required by, the Seamen's Act, which confirms the binding nature of the articles and requires execution by employer and seaman alike of written shipping articles specifying *inter alia* all provisions as to wages.[12] The lower courts have repeatedly refused to imply contracts in place of such valid and binding express contracts for wages.[13]

There is no merit in petitioners' contention that *Labor Board v. Waterman Steamship Corp.*, 309 U.S. 206, establishes that "the articles are not, under modern conditions of collective bargaining, the meaningful contract as to wages" (Pet. 23). In that case the Labor Board held that

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12. 46 U.S.C. § 564. See also 46 U.S.C. §§ 565, 578 and 676, Third; *cf.* 46 U.S.C. §§ 597, 604, 644, 676 and 713. It is admitted that articles were signed by Rogers as required by statute for each of his voyages (R. III. 23).

13. *The Lottie Bennett*, 3 F. Supp. 764 at 766 (N.D. Cal. 1933); *The Sea Train New Orleans*, 127 F.2d 878 at 879 (5th Cir. 1942); *Montoya v. Tidewater Associated Oil Co.*, 174 F.2d 607 (2d Cir. 1949), cert. den. 338 U.S. 847.

seamen, like other employes, had "a continuing tenure or relationship" that was protected by the National Labor Relations Act and overruled a contention that seamen paid off under their articles could be denied further employment because of union affiliation without violation of the Act. This holding in no way suggests that articles no longer are express contracts as to wages. Articles do not deal with the continuing tenure protected by the Act; but they do deal with wages in detail as the statutes clearly and designedly require.[14] Accordingly they are "meaningful" as to wages.

Reliance on *Archawski v. Hanioti*, 350 U.S. 532, is equally erroneous. In that case this Court merely held that recovery could be had in admiralty on the theory of *indebitatus assumpsit* where the facts supported such a recovery. It clearly did not hold, as petitioners urge, that a pleading incorporating a common count in the allegations is immune to exceptions; in fact no pleading issue was involved in the case. Patently, the question is not whether in some hypothetical case a pleading in the common counts will stand up in admiralty, but rather whether the district court correctly dismissed the libel on the basis of all the facts properly before it after Rogers stood on his pleading. This question is not only insubstantial but has been correctly decided in accordance with well-settled legal principles. *Archawski* in no way even suggests that when the common counts are incorporated in a pleading a contract will be implied on a matter governed by an express written contract.

Petitioners' argument that decisions of this Court have been ignored by the courts below will not stand analysis.

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14. In *Waterman*, this Court stated, with respect to the statutory requirement that articles be signed for each voyage, "The design was to protect seamen from being carried to sea against their will; to prevent mistreatment as to wages and to assure against harsh application of the iron law of the sea during voyages." 309 U.S. 206 at 212.

Nor is there merit in the plaint of Rogers that he was not given leave to file an amended pleading after the lower court's decree was sustained (Pet. 18); it simply ignores the principle that appeals are allowed only from final judgments.

No substantial question for this Court is presented by petitioners' attack upon the lower courts for not deciding moot questions before dismissing the action, the parties and their causes.

Petitioners' first two questions relate to class suit and joinder questions involved in the 1957 order. The court of appeals refused to review these because they were not properly before it. Pointing to controlling facts that "the parties did not choose to let that order go to final judgment" and that "they elected to amend" (R. 608; Pet. App. 20-21) the court below held, on authority controlling in the circuit, that complaint could not be made before it with respect to the 1957 order.[15] Petitioners do not attack this holding as being contrary to the accepted and usual rule, or as being in conflict with an applicable decision of this Court or of any other circuit. No one of their questions is directed at this holding. We submit this disposes of the class suit and joinder questions here.

In any event, such questions are moot. This is unmistakably demonstrated by the principal grounds of the opinions holding that there was a proper dismissal of all the parties, both the petitioners and respondents, and of all the causes of action. Petitioners were dilatory and came too late; they

15. The court of appeals cited *Studio Carpenters Local Union v. Loew's Inc.*, 182 F.2d 168, cert. den. 340 U.S. 828, reh. den. 340 U.S. 885. This ground, contrary to statements of the petition, was clearly set forth as to both the joinder and class suit issues in the original opinion (R. 608; App. 20-21) and was amplified in the opinion denying rehearing by further statements that petitioners elected to amend (R. 612, 613; Pet. App. 22, 23-24).

failed to comply with specific terms imposed on the filing of amended pleadings; they failed to comply with the orders of the court, a crucial one being entered with consent; their time for taking any further action in this suit expired when they filed a pleading that was improper under the local and Supreme Court Admiralty Rules; on his individual claims, Rogers failed to state a cause of libel;[16] the dismissal was proper for other reasons. These grounds, in general, relate to the interpretation and application of rules and orders governing the form of pleadings and other matters peculiarly within the discretion of the trial court so that the decisions on them are subject to only the most limited review in the court of appeals. Let us turn to some of them.

The court of appeals properly sustained the exercise of discretion in dismissing all parties and all causes.

All respondents, the 650 petitioners and the libelant-petitioners (except Rogers), and all their causes were dismissed from this suit because no amended pleadings were filed in accordance with previous orders. The district court found that the terms on filing amended pleadings set forth in the original orders had not been satisfied and the court of appeals affirmed (R. 607; Pet. App. 18). These terms had been "imposed" or "directed", as provided in Supreme Court Admiralty Rules 23 and 27 (App. 11). All the petitioners repeatedly acquiesced in these terms by their many requests for extensions of time, the orders being

16. The disposition of the individual Rogers libel clearly disposes of his claims and renders moot all issues as to him. But petitioners have insisted that he has presented a "pilot case" (Pet. 11); they repeatedly stated in the courts below that they were prepared to be bound by the determination of this case on the merits because, in petitioners' minds, all their cases are alike on the merits so that if they cannot recover in one, they cannot recover in any (R. 554). Acceptance of this position even for the sake of argument, requires the conclusion that all other issues in the entire litigation are moot.

regularly conditioned on compliance with these terms. It would be unconscionable, of course, for petitioners to have obtained eleven extensions of time covering a period of many years, under a guise that they were attempting to comply with these terms, and then to have attacked these terms as arbitrary or capricious or to have attacked the power of the court to impose these conditions. In fact, petitioners directly consented to the December, 1959 order reaffirming these terms, limiting what they could do in this proceeding and setting a final time limit thereon (R. 593). Their dismissal - for failure to meet these terms within the time limit set - is a judgment pursuant to a consent order and thus, we submit, dismissal is by a decree that cannot be reviewed. In any event the court of appeals not only directly held that the second amended libel, and its supplement if open to consideration, failed to comply with the orders referred to in the December, 1959 order (R. 604-606; Pet. App. 15-17), but it went on to say, "The attempt in the second amended libel to add these 650 seamen as parties libelant was in complete disregard of this order of denial (of intervention of May 6, 1959) and constituted noncompliance therewith." (R. 606; Pet. App. 17-18). Petitioners do not here claim that they acted in compliance with these orders.[17] Dismissal was clearly a proper exercise of discretion in view of the failure to comply with the court's orders.[18]

Not only did petitioners so violate the applicable initial terms and later orders, but they exhausted their time and were found to be "too late" (R. 227; Pet. App. 33). On

17. Pet. 16-17, 24, and 3rd question, Pet. 3.

18. Supreme Court Admiralty Rule 38 provides, "If, in any admiralty suit, the libellant shall not . . . comply with the orders of the court . . . the same may be dismissed with costs."

this ground all respondents were dismissed from this suit (R. 227-228; Pet. App. 34-35). So too, libelant-petitioners (except Rogers) and all of their individual and representative cases, were dismissed for failure to "tender any claims" within the time limits (R. 227; Pet. App. 33). Similarly, the court of appeals held that the 650 petitioners were properly denied leave to participate in this suit for being "too late" (R. 607; Pet. App. 18-19). The court of appeals gave a further ground for this result in that the 650 petitioners had sought to become parties to the case by pleading their counts without seeking or obtaining leave (R. 606-607; Pet. App. 17-18).

This suit has been left an empty shell by the dismissal of the *Alaska Steamship* action and the *American President Lines* action, all of the parties libelant, all of their individual and representatives causes, and all respondents and by the holding that the 650 petitioners never became parties to the action. The court of appeals held, as petitioners admit (Pet. 17), that any questions remaining in the suit, thus stripped down to the caption and a file number, were moot. These actions being clearly proper, there are no other issues in the suit.

Petitioners' suggestions that this Court should give them further opportunity to proceed in this suit do not present a substantial question.

By their third question petitioners suggest that they will be denied due process of law unless they are given a further opportunity to proceed in view of their alleged misinterpretation or misconstruction of the terms that for years had been governing their participation in this suit.[19]

19. There is no basis for petitioners' claim of "mere misconstruction of an ambiguous order" (Pet. 3) or for excusing their "misinterpretation" (Pet. 24). Their reference to a colloquy in the district court (Pet. 24) ignores the context in which that court

The district court dismissed libelant-petitioners. No one of the three filed an amended pleading within the 75 days allowed in the eleventh extension of time, although there had been clear and formal notification that there would be no further extensions of time granted. Each could have at any time filed a pleading like that filed by Rogers. There is no claim that the earlier orders permitted them to do nothing.

The petition, however, seems primarily concerned with the situation of the 650 petitioners. The decree was sustained as to them because of noncompliance with the terms of the original orders, as to which a claim of misinterpretation or misconstruction is made, and because they were "too late". The court of appeals upheld the decree on the further ground that the attempt of the 650 petitioners to come into the suit "was in complete disregard" of the order of May 6, 1960 (R. 606; Pet. App. 17-18), an order as to which there is no claim of misconstruction or misinterpretation. And beyond this, the court of appeals did *not* permit the dismissal to operate with prejudice as to the 650 petitioners but permitted it only to preclude their "participation in the instant action" (R. 607; Pet. App. 18). There has been no lack of due process.

The courts below have not been hostile to these seamen.

While petitioners would lead this Court to believe that they were the victims of hostility on the part of every court that has heretofore dealt with them, the above analysis

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refused petitioners' request to amend its denial of intervention so as to make it without prejudice to its later renewal (R. 582). Similarly, the reference to the 1957 opinion of the court of appeals (Pet. 10-11) indicates a studied ignoring of the language from this Court's opinion in *Collins v. Miller*, 252 U.S. 364 at 370 that was twice quoted by the court of appeals (R. 148-5; Pet. App. 73, 74).

of their principal complaints demonstrates that they are completely groundless. The court of appeals has neither rendered a decision in conflict with the decision of another court of appeals on the same matter nor decided a federal question in a way that is in conflict with the applicable decisions of this Court. It has not departed from the accepted and usual course of judicial procedures, or sanctioned such a departure by a lower court. The orders below do not call for an exercise of this Court's power of supervision. The courts have simply, and uniformly and repeatedly, told petitioners that they, like other litigants, cannot proceed in court if they insist in ignoring court orders, the governing rules of court procedure and well-established substantive law.

CONCLUSION

We respectfully submit that there are no grounds for the grant of a writ of certiorari and the petition should be denied.

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Appendix

ABBREVIATED HISTORY OF PROCEEDINGS

June 19, 1952	The Court of Appeals for the Ninth Circuit entered its consent decree in No. 13386 **(Pet. App. 36-64).**
June 21, 1955	The National Labor Relations Board certified the Seafarers International Union **(App. 13).**
February 8, 1956	Libelant-petitioners filed a libel in personam.
May 1, 1956	Exceptions and exceptive allegations were filed by 13 respondents.
July 17, 1956	Libelant-petitioners filed a reply to exceptive allegations.
November 16, 1956	An order was entered holding that there was misjoinder of parties and causes in the first two counts and that the class counts should be dismissed **(App. 15-18).**
January 15, 1957	Libelant-petitioners noticed a motion for reconsideration and a request for ruling and a motion to consolidate causes of action.
February 12, 1957	A formal order was entered sustaining exceptions asserting misjoinder, dismissing the class counts, denying the motions of January 15 and granting the four libelant-petitioners a limited privilege of filing amended pleadings **(App. 18-20).**
February 27, 1957	Libelant-petitioners filed a notice of appeal.
March 1, 1957	Libelant-petitioners filed interrogatories with respect to the employment of petitioners.
April 1, 1957	The court reserved ruling on the objections to interrogatories filed by the 13 respondents until disposition of the appeal.
October 29, 1957	The appeal was dismissed as premature **(Pet. App. 68-75).**
January 23, 1958	An order was entered extending the time to replead in accordance with the order of February 12, 1957.

March 5, 1958	An order was entered extending the time to replead pursuant to the order of January 23, 1958.
April 23, 1958	An order was entered extending the time to replead pursuant to previous orders.
June 27, 1958	An order was entered extending the time to replead pursuant to previous orders.
August 26, 1958	An order was entered extending the time to replead pursuant to the order of February 12, 1957.
October 27, 1958	Libelant-petitioners noticed a motion to extend time to replead and to set a hearing on the objections to the interrogatories filed by 13 respondents.
October 31, 1958	An order was entered extending time to replead.
February 5, 1959	An order was entered sustaining objections to the interrogatories and giving libelant-petitioners 20 days to file amended pleadings **(App. 20-23)**.
February 25, 1959	An order was entered extending time to replead.
March 17, 1959	A notice of motion for leave to become parties libelant or, in the alternative, to intervene as parties libelant was filed on behalf of the 650 petitioners and three libelant-petitioners **(App. 23-24)**.
March 19, 1959	An amended seamen's libel in personam was filed by Rogers individually against American President Lines individually.
April 6, 1959	At the hearing on the motions of March 17, 1959 they were orally denied and the court declared it would enlarge time and would enter an order directing the Coast Guard to furnish information.
May 6, 1959	A formal order was entered denying petitioners' motion for leave to become parties libelant or, in the alternative, to intervene

	as parties libelant and enlarging time within which amended pleadings might be filed in conformity with the previous orders of November 16, 1956, February 12, 1957 and February 5, 1959 **(App. 24-26)**.
July 17, 1959	Pursuant to the oral ruling of April 6, 1959 an order was entered directing the Coast Guard to furnish information with respect to the employment of petitioners **(App. 27)**.
August 31, 1959	An order was entered extending the time provided in the order of May 6, 1959 for filing amended pleadings.
October 30, 1959	At the hearing on libelant-petitioners' motion for additional time petitioners consented to the entry of an order imposing additional terms and providing the final extension of time of 75 days.
December 30, 1959	A formal order was entered, approved as to form by petitioners, enlarging the time to file amended pleadings in conformity with the orders of November 16, 1956, February 12, 1957 and February 5, 1959, requiring them to be in strict conformity to and compliance with said orders, providing that no further extension of time would be granted beyond January 15, 1960 and warning that respondents against whom such pleadings were not filed would be dismissed **(App. 28-30)**.
January 14, 1960	The second amended libel in personam was filed.
January 25, 1960	Respondents filed motions to strike and dismiss the action.
January 28, 1960	A supplement to the second amended libel was filed.

February 2, 1960	An order was entered granting respondents' motion to dismiss, except as to the separate libel filed by John J. Rogers **(App. 31)**.
February 16, 1960	A final decree was entered severing the individual claims of John J. Rogers against American President Lines and dismissing as to all other causes and parties **(App. 32-34)**.
March 7, 1960	Exceptions and exceptive allegations to the libel of John J. Rogers were filed.
March 24, 1960	A reply to exceptive allegations was filed by Rogers.
May 31, 1960	An order sustaining exceptions to the amended libel was entered granting leave to amend **(App. 35-37)**.
June 30, 1960	Motion for reconsideration was filed.
July 15, 1960	An order denying motion for reconsideration was filed **(App. 37-38)**.
September 2, 1960	A final decree of dismissal was entered **(App. 38)**.
January 27, 1961	The decree of February 16, 1960 was affirmed **(Pet. App. 4-21)**.
April 4, 1961	A motion for rehearing was denied **(Pet. App. 22-24)**.
June 5, 1961	The decree of September 2, 1960 was affirmed **(Pet. App. 25-31)**.

28 U.S.C. § 1916. Seamen's Suits

In all courts of the United States, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the enforcement of laws enacted for their health or safety without prepaying fees or costs or furnishing security therefor.

46 U.S.C. § 564. Shipping articles

The master of every vessel bound from a port in the United States to any foreign port other than vessels engaged in trade between the United States and the British North American posessions, or the West India Islands, or Mexico, or of any vessel of the burden of seventy-five tons or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before he proceeds on such voyage, make an agreement, in writing or in print, with every seaman whom he carries to sea as one of the crew, in the manner hereinafter mentioned; and every such agreement shall be, as near as may be, in the form given in the table marked A, in the schedule annexed to this chapter, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars:

First. The nature and, as far as practicable, the duration of the intended voyage or engagement, and the port or country at which the voyage is to terminate.

Second. The number and description of the crew, specifying their respective employments.

Third. The time at which each seaman is to be on board, to begin work.

Fourth. The capacity in which each seaman is to serve.

Fifth. The amount of wages which each seaman is to receive.

Sixth. A scale of the provisions which are to be furnished to each seaman.

Seventh. Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which may be sanctioned by Congress or authorized by the Commandant of the Coast Guard not contrary to or not otherwise provided for by law, which the parties agree to adopt.

Eighth. Any stipulations in reference to advance and allotment of wages, or other matters not contrary to law.

46 U.S.C. § 565. Rules for shipping articles

The following rules shall be observed with respect to agreements:

First. Every agreement, except such as are otherwise specially provided for, shall be signed by each seaman in the presence of a Coast Guard official to whom the duties of shipping commissioner have been delegated.

Second. When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by such Coast Guard official, and the other part shall contain a special place or form for the description and signatures of persons engaged subsequently to the first departure of the ship and shall be delivered to the master.

Third. Every agreement entered into before such Coast Guard official shall be acknowledged and certified under the hand and official seal of such Coast Guard official. The certificate of acknowledgment shall be indorsed on or annexed to the agreement; and shall be in the following form:

"State of ....., County of .....:

"On this ..... day of ....., personally appeared before me, a Coast Guard official in and for the said county, A.B., C.D., and E.F., severally known to me to be the same persons who executed the foregoing instrument, who each for himself acknowledged to me that he had read

or had heard read the same; that he was by me made acquainted with the conditions thereof, and understood the same; and that, while sober and not in a state of intoxication, he signed it freely and voluntarily, for the uses and purposes therein mentioned."

46 U.S.C. § 578. Unlawful shipments void

All shipments of seamen made contrary to the provisions of any Act of Congress shall be void; and any seaman so shipped may leave the service at any time, and shall be entitled to recover the highest rate of wages of the port from which the seaman was shipped, or the sum agreed to be given him at his shipment.

46 U.S.C. § 597. Payment at ports

Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in section 596 of this title: *Provided further*, That notwithstanding any release signed by any seaman under section 644 of this title any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: *And*

provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement. This section shall not apply to fishing or whaling vessels or yachts.

46 U.S.C. § 604. Libel for wages

If the master against whom such summons is issued neglects to appear, or, appearing, does not show that the wages are paid or otherwise satisfied or forfeited, and if the matter in dispute is not forthwith settled, the judge or justice or United States commissioner shall certify to the clerk of the district court that there is sufficient cause of complaint whereon to found admiralty process; and thereupon the clerk of such court shall issue process against the vessel. In all cases where the matter in demand does not exceed $100 the return day of the monition or citation shall be the first day of a stated or special session of court next succeeding the third day after the service of the monition or citation, and on the return of process in open court, duly served, either party may proceed therein to proofs and hearing without other notice, and final judgment shall be given according to the usual course of admiralty courts in such cases. In such suits all the seamen having cause of complaint of the like kind against the same vessel may be joined as complainants, and it shall be incumbent on the master to produce the contract and log book, if required to ascertain any matter in dispute; otherwise the complainants shall be permitted to state the contents thereof, and the burden of proof of the contrary shall be on the master. But nothing herein contained shall prevent any seaman from maintaining any action at common law for the recovery of his wages, or having immediate process out of any court having admiralty jurisdiction wherever any vessel

may be found, in case she shall have left the port of delivery where her voyage ended before payment of the wages, or in case she shall be about to proceed to sea before the end of the ten days next after the day when such wages are due, in accordance with section 596 of this title. This section shall not apply to fishing or whaling vessels or yachts.

46 U.S.C. § 644. Rules for settlement

The following rules shall be observed with respect to the settlement of wages:

First. Upon the completion before a Coast Guard official to whom the duties of shipping commissioner have been delegated, of any discharge and settlement, the master or owner and each seaman, respectively, in the presence of such Coast Guard official, shall sign a mutual release of all claims for wages in respect of the past voyage or engagement, and such Coast Guard official shall also sign and attest it, and shall retain it in a book to be kept for that purpose, provided both the master and seamen assent to such settlement, or the settlement has been adjusted by such Coast Guard official.

Second. Such release, so signed and attested, shall operate as a mutual discharge and settlement of all demands for wages between the parties thereto, on account of wages, in respect of the past voyage or engagement.

Third. A copy of such release, certified under the hand and seal of such Coast Guard official to be a true copy, shall be given by him to any party thereto requiring the same, and such copy shall be receivable in evidence upon any future question touching such claims, and shall have all the effect of the original of which it purports to be a copy.

Fourth. In cases in which discharge and settlement before a Coast Guard official to whom the duties of shipping commissioner have been delegated are required, no pay

ment, receipt, settlement, or discharge otherwise made shall operate as evidence of the release or satisfaction of any claim.

Fifth. Upon payment being made by a master before a Coast Guard official to whom the duties of shipping commissioner have been delegated, such official shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall, between the master and his employer, be received as evidence that he has made the payments therein mentioned.

46 U.S.C. § 676. Rules as to list of crew

The following rules shall be observed with reference to vessels bound on any foreign voyage:

First. The duplicate list of the ship's company required to be made out by the master and delivered to the collector of the customs, under section 674 of this title, shall be a fair copy in one uniform handwriting without erasure or interlineations.

Second. It shall be the duty of the owners of every such vessel to obtain from the collector of the customs of the district from which the clearance is made, a true and certified copy of the shipping articles containing the names of the crew, which shall be written in a uniform hand, without erasures or interlineations.

Third. These documents, which shall be deemed to contain all the conditions of contract with the crew as to their service, pay, voyage, and all other things, shall be produced by the master, and laid before any consul of the United States, whenever he may deem their contents necessary to enable him to discharge the duties imposed upon him by law toward any mariner applying to him for his aid or assistance.

Fourth. All interlineations, erasures, or writing in a hand different from that in which such duplicates were originally made, shall be deemed fraudulent alterations, working no change in such papers, unless satisfactorily explained in a manner consistent with innocent purposes and the provisions of law which guard the rights of mariners.

Fifth. If any master of a vessel shall proceed on a foreign voyage without the documents required, or refuse to produce them when required, or to perform the duties imposed by this section, or shall violate the provisions thereof, he shall be liable to each and every individual injured thereby in damages, to be recovered in any court of the United States in the district where such delinquent may reside or be found, and in addition thereto be punishable by a fine of $100 for each offense.

Sixth. It shall be the duty of the boarding officer to report all violations of this section to the collector of the port where any vessel may arrive, and the collector shall report the same to the Commandant of the Coast Guard and to the United States attorney in his district.

46 U.S.C. § 713. Definitions, schedule, and tables

* * * * * * *

TABLE A

FORM OF ARTICLES OF AGREEMENT

United States of America.

(Date and place of first signature of agreement, including name of shipping office):

It is agreed between the master and seamen or mariners of the _____, of which _____ is at present master, or whoever shall go for master, now bound from the port of _____, to _____, _____, (here the voyage is to be described, and the

places named at which the vessel is to touch, or if that cannot be done, the general nature and probable length of the voyage is to be stated.)

And the said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said master, or of any person who shall lawfully succeed him, and of their superior officers in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore; and in consideration of which service, to be duly performed, the said master hereby agrees to pay the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the annexed scale. And it is hereby agreed that any embezzlement, or willful or negligent destruction of any part of the vessel's cargo or stores, shall be made good to the owner out of the wages of the person guilty of the same; and if any person enters himself as qualified for a duty which he proves himself incompetent to perform, his wages shall be reduced in proportion to his incompetency. And it is also agreed that if any member of the crew considers himself to be aggrieved by any breach of the agreement or otherwise, he shall represent the same to the master or officer in charge of the vessel, in a quiet and orderly manner, who shall thereupon take such steps as the case may require. And it is also agreed that (here any other stipulations may be inserted to which the parties agree, and which are not contrary to law).

In witness whereof the said parties have subscribed their names hereto, on the days against their respective signatures mentioned.

Signed by ...., master, on the .... day of ....., nineteen hundred and .....

Signature of crew	Birthplace	Age	Height		Description		Wages per month	Wages per run	Advance wages	Amount of monthly allotment	Time of service		Hospital money	Wages taken	Wages due	Place and time of entry	Time at which he is to be on board	In what capacity	Coast Guard Officer's signature or initials	Allotment payable to—	Conduct qualifications
			Feet	Inches	Complexion	Hair					Months	Days									
....	....	....	....		....		....	....	....	....	....	....	....	....	....	....	....	....	....	....	....
....	....	....	....		....		....	....	....	....	....	....	....	....	....	....	....	....	....	....	....
....	....	....	....		....		....	....	....	....	....	....	....	....	....	....	....	....	....	....	....

NOTE.—In the place for signatures and descriptions of men engaged after the first departure of the ship, the entries are to be made as above, except that the signatures of the consul or vice consul, officer of customs, or witness before whom the man is engaged, is to be substituted for that of the shipping master.

ACCOUNT OF APPRENTICES ON BOARD

Christian and surname of apprentice in full	Date of registry of indenture	Port at which indenture was registered	Date of register of assignment	Port at which assignment was registered
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

SCALE OF PROVISIONS TO BE ALLOWED AND SERVED OUT TO THE CREW DURING THE VOYAGE

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Water ..... quarts	5	5	5	5	5	5	5
Biscuit ..... pound	½	½	½	½	½	½	½
Beef, salt ..... pounds	.....	.....	1½	.....	1½	.....	1½
Pork, salt ..... pound	.....	1	.....	1	.....	1	.....
Flour ..... pound	½	.....	½	.....	½	.....	.....
Canned meat ..... pound	1	.....	.....	1	.....	.....	.....
Fresh bread ..... pounds	1½ pounds daily						
Fish, dry, preserved, or fresh pound	.....	.....	.....	.....	.....	1	.....
Potatoes or yams ..... pound	1	1	1	1	1	1	1
Canned tomatoes ..... pound	½	.....	.....	.....	.....	½	.....
Peas ..... pint	.....	.....	½	.....	.....	½	.....
Beans ..... pint	.....	½	.....	½	.....	.....	.....
Rice ..... pint	.....	½	.....	.....	.....	.....	½
Coffee (green berry) ..... ounce	1½	1½	1½	1½	1½	1½	1½
Tea ..... ounce	½	½	½	½	½	½	½
Sugar ..... ounces	3	3	3	3	3	3	3
Molasses ..... pint	½	.....	½	.....	½	.....	.....
Dried fruit ..... ounces	3	.....	3	.....	3	.....	.....
Pickles ..... pint	.....	½	.....	½	.....	½	.....
Vinegar ..... pint	.....	.....	½	.....	.....	.....	½
Corn meal ..... ounces	4	.....	.....	.....	4	.....	.....
Onions ..... ounces	4	.....	.....	.....	4	.....	4
Lard ..... ounce	1	1	1	1	1	1	1
Butter ..... ounce	2	2	2	2	2	2	2
Mustard, pepper, and salt sufficient for seasoning.							

SUBSTITUTES

One pound of flour daily may be substituted for the daily ration of biscuit or fresh bread; two ounces of desiccated vegetables for one pound of potatoes or yams; six ounces of hominy, oatmeal, or cracked wheat, or two ounces of tapioca, for six ounces of rice; six ounces of canned vegetables for one-half pound of canned tomatoes; one-eighth of an ounce of tea for three-fourths of an ounce of coffee; three-fourths of an ounce of coffee for one-eighth of an ounce of tea; six ounces of canned fruit for three ounces of dried fruit; one-half ounce of lime juice for the daily ration of vinegar; four ounces of oatmeal or cracked wheat for one-half pint of corn meal; two ounces of pickled onions for four ounces of fresh onions.

When the vessel is in port and it is possible to obtain the same, one and one-half pounds of fresh meat shall be substituted for the daily rations of salt and canned meat; one-half pound of green cabbage for one ration of canned tomatoes; one-half pound of fresh fruit for one ration of dried fruit. Fresh fruit and vegetables shall be served while in port if obtainable. The seamen shall have the opportunity of accepting the fare the master may provide, but the right at any time to demand the foregoing scale of provisions.

The foregoing scale of provisions shall be inserted in every article of agreement, and shall not be reduced by any contract, except as above, and a copy of the same shall be posted in a conspicuous place in the galley and in the forecastle of each vessel.

The three preceding paragraphs and the scale of provisions shall not apply to fishing or whaling vessels or yachts.

* * * * * * *

RULES OF PRACTICE IN ADMIRALTY AND MARITIME CASES PROMULGATED BY THE SUPREME COURT OF THE UNITED STATES

Rule 23. Amendments to Libels

In all informations and libels in causes of admiralty and maritime jurisdiction, amendments in matters of form may be made at any time, on motion to the court, as of course. And new counts may be filed, and amendments in matters of substance may be made, on motion, at any time before the final decree, on such terms as the court shall impose. And where any defect of form is set down by the respondent or claimant upon special exceptions, and is allowed, the court may, in granting leave to amend, impose terms on the libellant.

Rule 27. Pleadings—Interrogatories—Exceptions to

Either party may except to the sufficiency, fullness, distinctness, relevancy or competency of any of the pleadings or interrogatories filed by the other party; and if the court shall so adjudge on a hearing on the exceptions, and shall order further pleadings or answers to be filed by either party, such pleadings or answers shall be filed within such time and on such terms as the court may direct.

Rule 38. Dismissal for Failure to Prosecute

If, in any admiralty suit, the libellant shall not appear and prosecute his suit, and comply with the orders of the court, he shall be deemed in default and contumacy; and the court may, on the application of the respondent or claimant, pronounce the suit to be deserted, and the same may be dismissed with costs.

Rule 44. Right of Trial Courts to Make Rules of Practice

In suits in admiralty in all cases not provided for by these rules or by statute, the District Courts are to regulate

their practice in such a manner as they deem most expedient for the due administration of justice, provided the same are not inconsistent with these rules.

LOCAL ADMIRALTY RULES, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF CALIFORNIA

Rule 7. Joinder and Intervention

(a) Parties may sue and parties, including a res, may be sued either jointly, severally or alternately in one suit, and persons having separate causes of action may join in one suit if the causes of action involve substantially the same questions and arise out of the same transaction.

(b) Persons who, under paragraph (a), might have joined as co-libelants, persons entitled to participate in the recovery, and, in suits for wages, any other seamen claiming wages for the same voyage, not made parties in the original libel, may be admitted, upon petition, to prosecute as co-libelants upon such terms as the Court may deem reasonable.

United States of America
Before the National Labor Relations Board

Cases Nos. 20-RC-2651 and 20-RC-2675

PACIFIC MARITIME ASSOCIATION, et al.,
Employers,
and
SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, PACIFIC DISTRICT, et al.,
Petitioners.

CERTIFICATION OF REPRESENTATIVES

IT IS HEREBY CERTIFIED that Seafarers International Union of North America, Pacific District, Comprising Marine Firemen's Union, Sailors Union of the Pacific and Marine Cooks & Stewards, AFL, has been designated and selected by a majority of the employees on vessels operated by the Pacific Maritime Association and Its Member Companies, a nonprofit California Corporation, in the unit heretofore found appropriate, as their representative for the purposes of collective bargaining and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Dated, Washington, D. C. June 21, 1955

In the United States District Court for the Northern District of California, Southern Division

In Admiralty—No. 27278

JOHN J. ROGERS, et al.,
Libelants,

vs.

ALASKA STEAMSHIP COMPANY, et al.,
Respondents.

ORDER

This is an action in admiralty instituted by four seamen for wages allegedly due them for services which they performed for the respondent shipowners while serving as stewards aboard the latters' ships. The libelants take advantage of 28 U.S.C. 1916 which permits them to proceed without the prepayment of costs. The libelants allege that one or more of them participated in voyages for one or more of the respondents during the period from June, 1952 to October, 1955 and that, although they received some compensation for such services, the wages paid them did not represent the reasonable value of their services.

For services so performed the libelants seek compensation in two forms. In the first count, the libelants, suing on their own behalf and on behalf of approximately four hundred other seamen from whom they have written authority to sue but who are not made parties to the libel, seek to be paid the reasonable value of their services, less payments already made to them and to welfare and pension funds established for their benefit. In the third count, the libelants, on behalf of themselves and approximately four thousand [R. 57] other unnamed seamen, ask that the reasonable

value of the services of all, less amounts already paid to each of them and to their welfare and pension funds, be paid directly into such funds.

The second and fourth counts are framed along the same lines as the first and third counts, respectively, adding allegations that the respondents will be unjustly enriched by failure to make the payment demanded.

Exceptions filed by the respondents raise procedural defects in the libel. We will first consider the exceptions pertinent to the first and second counts, namely, those directed to the misjoinder of the four named libelants, the respondents and the causes of action and the propriety of the four named libelants representing some four hundred other seamen.

Rule 7(a) of the Admiralty Rules of this District provide:

> "Parties may sue and parties, including a res, may be sued either jointly, severally or alternately in one suit, and persons having separate causes of action may join in one suit if the causes of action involve substantially the same questions and arise out of the same transaction."

The requirement that the cause of action arise out of the same transaction controls the disposition of the exceptions directed to the misjoinder. The claim for wages is based on voyages, each voyage constituting a separate cause of action for each seaman. But each [R. 58] voyage is a separate transaction between a seaman and the shipowner. Therefore, the causes of action which the libelants allege do not arise out of the same transaction. This precludes the joinder of the respondents and likewise precludes the joinder of the four named seamen. It necessarily follows that if the parties cannot be joined, the causes of

action cannot be joined. The exception to the joinder of the four named libelants and the respondents and the joinder of the causes of action should be sustained.

We next consider the question of whether one or more seamen may sue on behalf of other seamen similarly situated. Rule 7(a) is not applicable to this question, as it is concerned with the joinder of parties and does not govern the propriety of representative suits in admiralty. There are no other admiralty rules, either of this Court or of the Supreme Court, which allow one seaman to represent another in a suit for wages. However, there are cases which either specifically allowed such procedure (*The Roosevelt*, D.C., 1938, 23 F.Supp. 620, modified in 94 F.Supp. 698) or recognized that such procedure would be possible under proper circumstances (*The Nico*, D.C., 1951 A.M.C. 1190; and *Totolos, et al. v. Compania De Navegacion Cristobal*, D.C., 1950, 94 F.Supp. 699). These cases required that the libeling seaman have written authorization from those whom he seeks to represent. Such authorization is present in this case. Therefore, the [R. 59] four named libelants may sue on behalf of those from whom they have authority to do so, if the named libelant and those from whom he has such written authority sailed on the same voyage or voyages together.

There are no admiralty rules governing the effect of misjoinder of parties and the respondents urge that the action be dismissed. Supreme Court Admiralty Rule 44 provides:

> "In suits in admiralty in all cases not provided for by these rules or by statute, the District Courts are to regulate their practice in such a manner as they deem most expedient for the due administration of justice, provided the same are not inconsistent with these rules."

We are influenced by Federal Rule of Civil Procedure 21 in determining what is expedient "for the due administration of justice." Rule 21 provides:

> "Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately."

Therefore, as to the causes of action alleged in the first two counts, the motion to dismiss should be denied. The causes of action of each of the four named libelants shall be completely severed, both as among themselves and as to each of the respondents against whom they have a claim, with the exception that any two or more of the four named libelants may join their claims against one respondent if they served together on the same voyage or voyages. Any one of the four named libelants may sue on behalf of any one of the four hundred whom they seek to represent if those represented seamen served on the [R. 60] same voyage or voyages with them.

We have been shown no authority which authorizes a class suit as is attempted in the third and fourth counts of this libel. Indeed, the language of the *Nico* and *Tatobas* cases, supra, and the modified order in *The Roosevelt*, supra, negate any such procedure. The exception to the class action should be sustained and the motion to dismiss should be granted as to the third and fourth counts.

Inasmuch as the foregoing requires a severance of the causes in the first two counts and a dismissal of the third and fourth counts, no ruling on the exceptive allegations concerning the shipping articles and releases is made. Nor, for the same reason, is any ruling made on the exception which raises the question of laches.

The respondents are to prepare an order in accordance with the above.

Dated: November 16, 1956.

s/ O. D. HAMLIN
United States District Judge

[Endorsed]: Filed Nov. 16, 1956. Clerk, U.S. Dist. Court, San Francisco [R. 61]

[Title of Court and Cause.]

ORDER

Exceptions and exceptive allegations having been filed to the libel in the above-entitled cause by various respondents and having regularly come on for hearing on the 8th day of May, 1956, libelants being represented by Allan Brotsky, Esq., respondent American President Lines, Ltd. being represented by Peter N. Teige, Esq., respondents Matson Navigation Company, The Oceanic Steamship Company and Oliver J. Olson & Co. being represented by Messrs. Brobeck, Phleger & Harrison by Alvin J. Rockwell, Esq., respondent Coastwise Line being represented by Richard Ernst, Esq., respondent Grace Line, Inc. being represented by Messrs. Wallace, Garrison, Norton and Ray by William R. Ray, Esq., and respondents American Mail Line, Pacific Transport Lines, Inc., States Steamship Company, Pacific-Atlantic Steamship Co., Pacific Far East Line, Pope & Talbot, Inc. and Pacific Argentine Brazil Line being represented by Messrs. Lillick, Geary, Wheat, Adams & Charles by Gary J. Torre, Esq., and the respective proctors having been heard in support of and in opposition to said exceptions and exceptive allegations, and the matter having been briefed and duly submitted for deci-

sion, and the court having filed on the 16th day of November, 1956 an order sustaining certain of said respondents' exceptions to the libel herein, reserving ruling on the exception which raises the question of laches and on the excepitve allegations concerning the shipping articles [R. 76] and releases, and directing that a further order be prepared and libelants having thereafter filed a motion to consolidate libelants' causes of action and a motion for reconsideration and request for ruling together with affidavits in reference thereto and the motions having been presented in open court and argued by libelants and respondents on the 7th day of February, 1957 and the Court having reconsidered the entire matter and good cause appearing therefor:

It is hereby ordered that Counts Three and Four of the libel herein be, and the same hereby are, dismissed; and

It is further ordered that the exceptions of said respondents, with respect to Counts One and Two of the libel herein to the misjoinder of libelants, respondents and causes of action, be and the same are hereby sustained; that the libelants shall have sixty (60) days to file amended pleadings in which the causes of action of each of the four named libelants shall be completely severed, both as among themselves and as to each of the respondents against whom they have a claim, with the exception that any two or more of the four named libelants may join their claims against one respondent with respect to one or more voyages on which they served together and any one of the four named libelants may sue with respect to one or more voyages on behalf of himself and those with whom said libelant sailed on the same voyage or voyages and whom [R. 77] said libelant has written authority to represent in this action, but not otherwise; and

It is further ordered that libelants' motion to consolidate libelants' causes of action and libelants' request for ruling may be, and the same hereby are, denied.

Dated: February 12, 1957.

s O. D. HAMLIN
United States District Judge

[Endorsed]: Filed Feb. 12, 1957. C. W. Calbreath, Clerk.
[R. 78]

[Title of Court and Cause.]

ORDER SUSTAINING OBJECTIONS TO INTERROGATORIES.

On February 8, 1956 the four named libelants filed a four-count libel against the thirty-three respondent steamship companies. Counts one and two respectively sought recovery for the reasonable value of services rendered to respondents and for unjust enrichment, on behalf of the four named libelants and some 600 other seamen who had purportedly authorized the four named libelants to sue. Counts three and four were class counts by the four named libelants seeking similar recovery on behalf of themselves and approximately 4000 unnamed seamen.

On February 12, 1957, Judge Hamlin entered an order dismissing counts three and four and sustaining exceptions to counts one and two on the ground of misjoinder of parties and causes of action. The order granted leave to file amended pleadings in which the causes of action of each of the four [R. 158] named libelants should be severed, both as among themselves and as to each of the respondents, with the exception that any two or more of the four named libelants might join their claims against one respondent with respect to one or more voyages on which they served

together and any one of the four named libelants might sue with respect to one or more voyages on behalf of himself and those with whom said libelant sailed on the same voyage or voyages and whom said libelant had written authority to represent in this action.

On February 27, 1957, libelants filed a notice of appeal from Judge Hamlin's order. Simultaneously they filed and served interrogatories directed to each of the thirty three respondent steamship companies as follows:

1. State whether, as to each libelant herein and each person named in Exhibit A to the libel herein, as supplemented through October 25, 1956 (some 600 seamen) such person was employed in the stewards department of any vessel owned, chartered, managed, operated, navigated or controlled by you during the period from June 19, 1952 through October 15, 1955.
2. If, as to any such person, the answer to the preceding interrogatory is in the affirmative, state as to each such person
   (a) the name of the vessel on which employed,
   (b) the voyage number or numbers during which employed,
   (c) the period or periods during which employed for each voyage number or numbers, and
   (d) the job classification in the stewards department for which employed for each such voyage.

Respondents objected to these interrogatories, and on April 1, 1957, Judge Murphy reserved ruling on the objections until libelants' appeal was disposed of.

On October 29, 1957, the Court of Appeals dismissed libelants' appeal on the ground that the order of Judge Hamlin from which the appeal was taken was not a final order. 249 F.2d 646. [R. 159] Thereafter libelants' time to

replead was extended from time to time until on November 17, 1958 it was extended until a reasonable time after the Court should hear and dispose of respondents' objections to the interrogatories which libelants had filed at the time of taking the appeal.

The Court has now heard respondents' objections to the interrogatories and written memoranda have been filed. Respondents' principal objection is that the interrogatories are premature inasmuch as there is now no libel on file in which any specific claim is asserted against any of the respondents. Libelants assert that they are unable to file amended pleadings in accordance with Judge Hamlin's order until they have the information sought by the interrogatories and that such interrogatories afford the only practical means of obtaining the information.

The mere statement of the circumstances under which the interrogatories were filed demonstrates that they are manifestly premature and improper. They are not legitimatized merely by the fact that answers by respondents would obviate any difficulty libelants may encounter in obtaining the information necessary to file amended pleadings. Moreover, it appears that the necessary information is readily available to each of the seamen in behalf of whom the original libel was filed. It is conceded that each seaman may at his own request obtain from the Coast Guard a list of the voyages on which he has sailed in the employ of any of the respondents.

The only substantial burden involved in the preparation of the amended pleadings is that which the proctors, who filed the original libel, may face in contacting the seamen on whose behalf they acted. Those seamen to whom this litigation is of any real importance should have maintained contact with their proctors.

Proctors have suggested that it will take an inordinate amount of time to contact the some 600 seamen who have claims [R. 160] against respondents. But, this in itself is not a ground on which respondents can be required to answer the interrogatories. Even if it were an equitable consideration in determining the propriety of the interrogatories, there has been no showing that proctors have made any effort to contact their clients in the many months that have elapsed since the appeal was dismissed on October 29, 1957.

Respondents' objections to libelants' interrogatories are sustained. The time for filing amended pleadings by libelants is extended for twenty days from the date of this order subject to modification upon a showing of good cause.

Dated: February 5, 1959.

LOUIS E. GOODMAN
Chief Judge

[Endorsed]: Filed Feb. 5, 1959. C. W. Calbreath, Clerk. [R. 161]

[Title of Court and Cause.]

MOTION FOR LEAVE TO BECOME PARTIES LIBELANT OR, IN THE ALTERNATIVE, TO INTERVENE AS PARTIES LIBELANT

The seamen named in Exhibit A attached to the original libel on file herein, as well as those named in subsequent supplements to said Exhibit A filed April 16, 1956, and October 24, 1956, move for leave to become parties libelant or, in the alternative, to intervene as parties libelant in this action, in order to assert their several claims against the appropriate parties respondent herein, with respect to the claim or claims each such seaman has for the reasonable

value of his services on the respective voyage or voyages aboard vessels of the respective respondents during the period embraced within the original libel.

Said motion will be made and based on the records and [R. 163] files of the within action.

Dated: March 16, 1959.

s *Allan Brotsky*
s *Rubin Tepper*
McMurray, Walker & Tepper
Proctors for Libelants

[R. 164]

[Title of Court and Cause.]

ORDER

Proctors for libelants having filed a motion, on behalf of the persons named on Exhibit A attached to the libel filed on February 8, 1956 and supplements to such schedule, for leave to become parties libelant and a motion to grant libelants other than John J. Rogers an extension of time to replead; and such motions having regularly come on for hearing on the 6th day of April, 1959, libelants and movants being represented by Allan Brotsky, Esq. and Rubin Tepper, Esq. and respondent American President Lines, Ltd. being represented by proctors Peter N. Teige, Esq. and George D. Wick, Jr., Esq. and respondents Matson Navigation Company, The Oceanic Steamship Company, and Oliver J. Olson & Company being represented by proctors Messrs. Brobeck, Phleger & Harrison, by Alvin J. Rockwell, Jr., Esq. and John M. Naff, Jr., Esq. and respondent Coastwise Line and certain other respondents being represented by proctor Richard Ernst, Esq. and respondent Grace Line, Inc. being represented by proctors [R. 179] William R. Wallace, Esq., William R. Ray, Esq. and May-

nard Garrison, Esq. and respondents American Mail Line, Pacific Far East Lines, Pacific Atlantic Steamship Co., Pacific Transport Lines, States Steamship Co., Pacific Argentine Brazil Lines and Pope & Talbot, Inc., being represented by proctors Messrs. Lillick, Geary, Wheat, Adams & Charles, by James L. Adams, Esq. and Gary J. Torre, Esq., and the matter having been duly submitted for decision and the Court having considered the entire matter including the previous orders of this Court dated November 16, 1956, February 12, 1957 and February 5, 1959, and good cause appearing therefor,

It Is Hereby Ordered that the motion for leave to become parties libelant, or, in the alternative, to intervene as parties libelant, is denied as to both alternatives;

It Is Further Ordered that the time for filing amendments by libelants, except libelant John J. Rogers, is extended to and including September 1, 1959, within which enlarged time amended pleadings may be filed in conformity with the said orders of November 16, 1956, February 12, 1957 and February 5, 1959.

This order shall not in any way modify or change any of the said three orders, except to enlarge the time for libelants other than John J. Rogers to file amended pleadings. The rights of libelants to file amended pleadings within the time herein specified and to obtain a pre-trial conference at an appropriate time are preserved in full, without prejudice thereto or mitigation thereof by this order, and all defenses of the respondents with respect to the subject matter hereof are preserved in full, without prejudice thereto or mitigation thereof by this order.

s/ GEORGE B. HARRIS
United States District Judge [R. 180]

May 6, 1959

Approved as to Form:

s *McMurray, Walker & Tepper*
s *Rubin Tepper*
Proctors for Libelants
s *Peter N. Teige*
s *George D. Wick, Jr.*
Proctors for American President Lines, Ltd.
s *Brobeck, Phleger & Harrison*
by *V.W.J.*
Proctors for Matson Navigation Company, The Oceanic Steamship Company, and Oliver J. Olson & Co.
s *Richard Ernst*
Proctor for Coastwise Line
s *Wallace, Garrison, Norton & Ray*
s *William R. Ray*
Proctors for Grace Line, Inc.
s *Lillick, Geary, Wheat, Adams & Charles*
s *James L. Adams*
Proctors for American Mail Line,
Pacific Transport Lines, Inc.
States Steamship Company
Pacific-Atlantic Steamship Co.
Pacific Far East Line
Pope & Talbot, Inc.
Pacific Argentine Brazil Line

[Endorsed]: Filed May 6, 1959. C. W. Calbreath, Clerk.

[R. 180-a]

[Title of Court and Cause.]

ORDER

Proctors for Libelants having filed the affidavit of Allan Brotsky, Esq., on behalf of libelants and the persons named on the schedule marked Exhibit A to the libel filed on February 8, 1956, and supplements to such schedule, and proctors for the respective respondents having indicated no objection thereto and to the issuance of the following order, and good cause appearing therefor,

It Is Hereby Ordered that the San Francisco office, Merchant Vessel Personnel Division, United States Coast Guard, furnish without prepayment of costs and fees in accordance with the provisions of Title 28 USCA § 1916, to Allan Brotsky, Esq., and Rubin Tepper, Esq., as proctors for libelants and the persons named on said schedule, the following information from the shipping records of each of the persons whose names appear on Exhibit A to the aforesaid affidavit, a copy of which exhibit is attached hereto and made a part hereof as if fully set forth at this point: [R. 195]

During the period from June 19, 1952, through October 15, 1955,

(a) The name of each vessel on which employed, and the name of the employer;

(b) The number or numbers for which employed;

(c) The period or periods during which employed for each such voyage; and

(d) The job classification for which employed for each such voyage.

Dated: July 17, 1959

s GEORGE B. HARRIS
United States District Judge

[Endorsed]: Filed Jul. 17, 1959. C. W. Calbreath, Clerk. [R. 196]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO PLEAD

Proctors for libelants having moved for a further enlargement of the time granted by this Court's order of May 6, 1959 for libelants other than John J. Rogers to file amended pleadings, and such motion having come on for hearing on the 30th day of October, 1959, libelants being represented by Messrs. McMurray, Walker & Tepper by Rubin Tepper, Esq. and respondents Matson Navigation Company, The Oceanic Steamship Company and Oliver J. Olson & Co. being represented by Messrs. Brobeck, Phleger & Harrison by John M. Naff, Jr., Esq., and respondent Grace Line, Inc. being represented by Messrs. Wallace, Garrison, Norton and Ray by William R. Ray, Esq., and respondents American Mail Line, Pacific Argentine Brazil Line, Pacific-Atlantic Steamship Co., Pacific Far East Line, Pacific Transport Lines, Inc., Pope & Talbot, Inc. and States Steamship Company being represented by Messrs. Lillick, Geary, Wheat, Adams & Charles by Gary J. Torre, Esq., and respondent [R. 210] Coastwise Line and certain other respondents being represented by Richard Ernst, and the Court having considered the entire matter, including the previous orders of this Court dated November 16, 1956, February 12, 1957, February 5, 1959, May 6, 1959, July 17, 1959, and August 31, 1959, and it having appeared to the Court that further time to file amended pleadings in conformity with the orders of this Court of November 16, 1956, February 12, 1957 and February 5, 1959 should be granted but not beyond the 15th day of January, 1960, and that additional motions by libelants should not be permitted until any and all such amended pleadings have been filed within the time herein allowed,

It is hereby ordered that the time for filing amended pleadings by libelants, except libelant John J. Rogers, is extended to and including January 15, 1960, within which enlarged time amended pleadings may be filed in conformity with said orders of November 16, 1956, February 12, 1957, and February 5, 1959; and

It is further ordered that this order shall not in any way modify or change any of the said three orders, except to enlarge the time for libelants other than John J. Rogers to file amended pleading ; that no other action unless strictly within the contemplation of the three said orders shall be taken by libelants during the time for which time is extended; and that all defenses of the respondents with respect to the subject matter hereof are preserved in full, without prejudice thereto or mitigation thereof by this order; and

It is further ordered that only such amended pleadings as are in strict conformity to and compliance with the said orders of this Court dated November 16, 1956, February 12, 1957, and February 5, 1959 and this order and as are served and filed on or before January 15, 1960 shall be permitted in connection with the subject matter of this action; that, upon motion of this Court or upon exparte motion of counsel dismissals shall be granted as to any [R. 211] and all respondents against whom amended pleadings of the type permitted hereby are not filed during the period ending January 15, 1960; that such motions may be restricted to grounds of failure to comply with the terms of this order or of said previous orders without constituting a waiver of any other defenses or contentions; and that no extension of the time herein specified shall be granted.

Dated: December 30, 1959.

s LOUIS GOODMAN
Judge of the United States District Court

Approved as to form:

s *Rabin Tepper*
Proctors for Libelants

/s/ *Peter N. Teige*
s *George D. Wick, Jr.*
Proctor for American President Lines, Ltd.

s *Alvin J. Rockwell*
s *John M. Naff*
s *Brobeck, Phleger & Harrison*
Proctors for Matson Navigation Company,
The Oceanic Steamship Company,
and Oliver J. Olson & Co.

s *Richard Ernst*
Proctor for Coastwise Line

s/ *William R. Ray*
Proctors for Grace Line, Inc.

/s/ *Lillick, Geary, Wheat, Adams & Charles*
/s/ *James L. Adams*
Proctors for American Mail Line, Pacific
Transport Lines, Inc., States Steamship
Company, Pacific-Atlantic Steamship Co.,
Pacific Far East Line, Pope & Talbot, Inc.,
Pacific Argentine Brazil Line

[Endorsed]: Filed Dec. 30, 1959. C. W. Calbreath, Clerk.
[R. 212]

[Title of Court and Cause.]

ORDER GRANTING MOTION TO DISMISS

The Second Amended Libel filed on January 14, 1960 does not tender any claims by the original four libelants either in their own behalf or in a representative capacity in behalf of other seamen in the manner prescribed by previous orders of this Court. For the first time, four years after the commencement of this action, the amended libel names as libelants some 600 seamen whom the four original libelants had previously sought to represent and names as respondents many shipping companies not heretofore named.

Thus the Second Amended Libel not only improperly joins causes of action arising out of unrelated contracts of employment, but also comes too late. All of the information required to present the claims of the 600 seamen as they are now presented has been available in the records of the Coast Guard since the commencement of this action. Since the order of this Court entered on November 16, 1956, the presently named libelants have been apprised of the limitations inherent [R. 223] in the presentation of their claims in a representative suit. Yet, they have delayed more than three years to file the amended libel in their own behalf.

Respondents' motion to dismiss this action is granted, except as to the separate libel filed on March 19, 1959 by John J. Rogers against the American President Lines.

Dated: February 2nd, 1960.

/s/ LOUIS E. GOODMAN
United States District Judge

[Endorsed]: Filed Feb. 2, 1960. C. W. Calbreath, Clerk.

[R. 224]

[Title of Court and Cause.]

FINAL DECREE OF DISMISSAL

This action having duly come on to be heard in its regular order on the 1st day of February, 1960 upon motion that the action be dismissed, the seamen named as libelants being represented herein by proctor Allan Brotsky, Esq. and proctor Rubin Tepper, Esq. of Messrs. McMurray, Walker & Tepper, and respondents Matson Navigation Company, The Oceanic Steamship Company, and Oliver J. Olson & Co. being represented by proctors Alvin J. Rockwell, Esq. and John M. Naff, Jr., Esq. of Messrs. Brobeck, Phleger & Harrison and respondent Coastwise Line being represented by proctor Richard Ernst, Esq. and respondent American President Lines, Ltd. being represented by proctors Peter N. Teige, Esq. and George D. Wick, Jr., Esq. and respondent Grace Line, Inc. being represented by proctors William R. Ray, Esq. and Maynard Garrison, Esq. of Messrs. Wallace, Garrison, Norton & Ray and respondents American Mail Line, Pacific Far East Lines, Pacific Atlantic Steamship Co., Pacific [R. 226] Transport Lines, States Steamship Co., Pacific Argentine Brazil Lines and Pope & Talbot, Inc. being represented by proctors James L. Adams, Esq. and Gary J. Torre, Esq. of Messrs. Lillick, Geary, Wheat, Adams & Charles, and the matter having been argued and duly submitted for decision and the Court having considered the entire matter, including the previous orders of this Court dated November 16, 1956, February 12, 1957, February 5, 1959, May 6, 1959, July 17, 1959, and December 30, 1959, and the Court, after due deliberation, having determined:

> The Second Amended Libel filed on January 14, 1960 does not tender any claims by the original four libelants either in their own behalf or in a representa-

tive capacity in behalf of other seamen in the manner prescribed by previous orders of this Court. For the first time, four years after the commencement of this action, the amended libel names as libelants such seamen whom the four original libelants could readily locate to represent and name as respondents many shipowning companies not before the Court.

Thus the Second Amended Libel not only [illegible] the causes of action arising out of alleged contracts of employment, but necessitates the use of the information required to present the claims of the new seamen as they are now presented has been available in the records of the Court since the commencement of this action. Since the order of this Court entered on November 16, 1956, the presently named libelants have been apprised of the particulars inherent in the presentation of their claims in a representative suit. Yet, they have delayed more than three years to file the amended libel on their own behalf.

And the Court having entered its Order denying Motion to Dismiss,

This Court hereby expressly determines that there is no just reason for delay in the entry of a final [illegible] as to all seamen named as libelants in the Second Amended Libel in Personam or in the Second Amended Libel in Personam and as to all respondents named in the Second Amended Libel in Personam or in the Second Amended Libel in Personam, with the exception of the claims of John J. Rogers on his own behalf against the American President Lines, Ltd., which are the subject matter of the separate libel filed on March 19, 1959.

Now therefore it is ordered, adjudged and decreed that the claims of John J. Rogers on his own behalf against [R. 227] the American President Lines, Ltd., which are the subject matter of the separate libel filed on March 19, 1959, be, and they hereby are, severed from this action; and

It is further ordered, adjudged and decreed that this action be, and it is hereby, dismissed as to all seamen named as libelants in the Seamen's Libel in Personam or in the Second Amended Libel in Personam and all respondents named in the Seamen's Libel in Personam or in the Second Amended Libel in Personam, but this dismissal shall not affect the claims of John J. Rogers on his own behalf against the American President Lines, Ltd., that have been severed from this action and which are the subject matter of the separate libel filed on March 19, 1959; and

It is further ordered, adjudged and decreed that the Clerk of this Court is expressly directed to enter this final decree dismissing this action as to all said seamen and all said respondents but this entry shall in no way affect the claims of John J. Rogers on his own behalf against the American President Lines, Ltd. that have been severed from this action; and

It is further ordered, adjudged and decreed that all sureties for cost that might be assessed against respondents other than the American President Lines, Ltd. are hereby released, discharged and exonerated.

Dated: February 16, 1960.

s LOUIS GOODMAN
United States District Judge

[Endorsed]: Filed Feb. 16, 1960. C. W. Calbreath, Clerk.
(Entered 2-17-60.)
[R. 228]

In the United States District Court for the Northern District of California, Southern Division

In Admiralty No. 27278

JOHN J. ROGERS, et al., *Libelants*, vs. AMERICAN PRESIDENT LINES, LTD., et al., *Respondents*.	)

ORDER SUSTAINING EXCEPTIONS TO AMENDED LIBEL

Libelant, a seaman in the stewards department, has filed a libel in personam "for wages under general maritime law". The amended libel with which we are here concerned contains eighteen counts, all of which are framed as common counts, the odd numbered counts beginning with Count 1 being based on quantum meruit for the reasonable value of services rendered by libelant, each count on a specific voyage, and the even numbered counts beginning with Count 2 restating the claim for the difference between what libelant received for [R. III. 27] his services and the reasonable value of such services, these counts are based on unjust enrichment implied in law theory.

The parties, in oral argument and in numerous briefs filed herein during the progress of this litigation, admit that this seaman, on each voyage, signed articles which clearly constitute a written contract of employment, and at completion of the voyage written releases were executed. Both of these writings were executed in accordance with laws of the United States passed for the purpose of protecting the seaman. In addition, the court may take judicial notice of the fact that this seaman, serving in the stewards department, worked under a consent decree of the Court of

Appeals for the Ninth Circuit entered in the case of *National Labor Relations Board vs. Pacific American Shipowners Association, etc.*, Number 13,386 in the files of the Court of Appeals.

On their face, the common counts upon which libelant relies do not satisfy the requirements of Rule 22 of the Supreme Court Admiralty Rules. Common counts arising from the common law are allowed as statements of legal conclusions, they never constitute statements of fact. Admiralty does not have a common law background and under Rule 22 of the Supreme Court Rules a libel shall "propound and allege in distinct articles the various allegations of fact upon which the libelant relies in support of his suit." In the instant case libelant argues that his pleadings adequately state libelant's claim and apprise respondent sufficiently of the nature of his [R. III. 28] claim without setting forth facts beyond the mere conclusions therein stated.

This can not be, for in this case these common counts, when considered together with the admitted facts and those of which this court can take judicial notice, that a written contract and a written release exist, that these agreements are of a type required by and executed in accordance with the laws of the United States, do not properly state a cause of action. Both the contract of employment of libelant and his release upon completion of the voyage must be set aside herein under some theory before libelant can successfully recover. The very least required of libelant is that he set forth the facts he relies on to avoid the ordinary meaning of the employment contract and the release. If he relies upon fraud or perhaps upon duress he must allege what facts constitute such; if he has another theory to avoid these agreements he should state it. It is a clear rule at law that averments of this nature must be by explicit pleading (F.R.C.P. 9(b).)

Thus it will be seen that even at law libelant's pleading is defective; certainly then in admiralty this pleading can not meet the more stringent test of Rule 22.

Under these circumstances respondents' exceptions to the amended libel filed herein on March 19, 1959, are sustained. Libelant is hereby granted thirty days to file a [R. III. 29] second amended libel herein.

Dated: May 31, 1960.

ALBERT C. WOLLENBERG
United States District Judge.

[Endorsed]: Filed May 31, 1960. Clerk U. S. Dist. Court, San Francisco.

[R. III. 30]

[Title of Court and Cause.]

ORDER DENYING MOTION FOR RECONSIDERATION.

Libelant's motion for reconsideration of the order of this Court of May 31, 1960, Sustaining Exceptions to Amended Libel came on for hearing. The oral arguments and opposing memoranda of points and authorities failed to point out error in the previous order and failed to disclose any material matters not previously considered and ruled upon.

The motion for reconsideration is grounded in part upon the fact that the Court did not cite *Archawski v. Hanlon*, 350 US 532, in its order. This case was before the Court and was considered. It was cited and discussed in the [R. III. 42] memoranda of both parties. It held that the libelant in that case had alleged a cause of action upon maritime contract within the Admiralty jurisdiction of the District Court. The case does not support the position of the Libelant that the pleadings in this case contain sufficient allegations of fact to meet the requirements of Admiralty Rule 22.

The motion for reconsideration is hereby, DENIED.

Dated: July 15, 1960

ALBERT C. WOLLENBERG
United States District Judge

[Endorsed]: Filed Jul. 15, 1960. Clerk U. S. Dist. Court, San Francisco.

[R. III. 43]

[Title of Court and Cause]

FINAL DECREE OF DISMISSAL

Libelant John J. Rogers having elected to stand on the pleadings on file herein and the court having entered an order dismissing the libel of John J. Rogers against respondent American President Lines, Ltd. on August 5, 1960,

It is hereby ordered, adjudged and decreed that the action of said John J. Rogers against respondent American President Lines, Ltd. be, and the same is, hereby, dismissed.

ALBERT C. WOLLENBERG
United States District Judge

Dated: September 2, 1960

[Endorsed]: Filed Sept. 2, 1960, Clerk U. S. Dist. Court, San Francisco.

[R. III. 45]

The form of the attached decree is approved.

/s/ *Peter N. Teige*
/s/ *George D. Wick, Jr.*
/s/ *Richard Ernst*
Proctors for Respondent
American President Lines, Ltd.

The form of the attached decree is approved.

/s/ *Rubin Tepper*
Proctor for Libelant

[R. III. 46]